HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.4334 of 2006
Date of decision : 26.02.2007

Ashok Tayal and others **.....Petitioners**

versus

Municipal Council, Hisar **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Sudhir Mittal, Advocate for the petitioner.
Mr.Sanjay Singh Chauhan, Advocate for the respondent.

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ORDER

HEMANT GUPTA, J.

The plaintiffs are in revision aggrieved against the order passed by the learned trial Court dated 1.8.2006, whereby the application filed by the plaintiffs to lead additional evidence was declined.

The plaintiffs have filed a suit for permanent injunction restraining the defendant from blocking the existing passage leading to the land of the plaintiffs. In the said suit, the plaintiffs moved an application for permission to lead additional evidence when the case was fixed for rebuttal evidence. By virtue of the additional evidence, the plaintiffs want to produce a copy of sale deed dated 14.3.1980, demarcation report dated 19.11.1998 from the records of the Municipal Corporation and the site plan from the records of the earlier litigation.

The learned trial Court has declined the application on the ground that the plaintiffs have not acted with due diligence while leading the evidence, therefore, the plaintiffs cannot be permitted to lead additional evidence.

Learned counsel for the petitioners has vehemently argued that the authenticity of the documents sought to be produced as additional evidence, is not disputed. Therefore, the plaintiffs should have been permitted to lead additional evidence. On the other hand, learned counsel for the respondent has argued that the suit was filed in the year 1998 and the application for permission to lead additional evidence has been filed at belated stage when the case was fixed for rebuttal evidence.

After hearing learned counsel for the parties, I am of the opinion that the plaintiffs should have been permitted to lead additional evidence. The documents sought to be produced are not of doubtful authenticity. Though it can be stated that the plaintiffs were not careful enough to lead their entire evidence in affirmative, but for delay due to lack of due diligence, the plaintiffs can be burdened with costs. Therefore, I deem it appropriate to allow the plaintiffs to produce such documents in additional evidence subject to payment of Rs.2000/- as costs.

Parties through their counsel are directed to appear before the learned trial Court on 5.4.2007. On the said date, the plaintiffs shall pay the costs. Thereafter, the learned trial Court shall fix a date for evidence of the plaintiffs. If the plaintiffs fail to lead evidence on the said date, the

evidence of the plaintiffs shall be deemed to be closed. It is needless to state that the defendant shall be given an opportunity to rebut the evidence to be led by the plaintiffs, in accordance with law.

The revision petition stands allowed accordingly.

(HEMANT GUPTA)
JUDGE

February 26, 2007
**mohinder*